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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1031

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
DAVID G. RALL and R. E. LEE,
Petitioners,

vs.

NORTHWEST AIRLINES, INC.,
Respondent.

PETITIONERS' REPLY BRIEF

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Air Line Pilots Association, International, David G. Rall and R. E. Lee submit this Reply Brief in order to respond briefly to several of the points raised in Re-

spondent's Brief in Opposition to Petition for a Writ of Certiorari.[1]

I. IMPORTANCE OF THE QUESTION HEREIN.

Respondent's sole answer to Petitioners' showing of the importance of the question involved herein (Petition 9-17) is that the question is not important because "air carriers and their unions have full contractual capacity to provide for the award of attorneys' fees in proceedings like this one." In many cases this Court has reviewed upon certiorari the issue in question could conceivably have been anticipated and provided for by contract. Petitioners' point is that the question whether attorneys' fees upon enforcement of air line adjustment board awards are **required** under the Railway Labor Act is a vitally important one for a number of reasons, not the least of which are Congress' concern to give employees a complete and effective remedy as a quid pro quo for employers' freedom from strikes over minor disputes, and that recoverability of attorneys' fees upon securing enforcement of awards is an element essential to the adjustment board mode of settling disputes.

Respondent concedes (as it must under **International Ass'n of Machinists v. Central Airlines, Inc.**, 372 U. S. 682 (1963)) that air line system, group or regional adjustment board awards are enforceable in federal court. This

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[1] Respondent has injected into its "Statement of Case" at page 3 of its Brief certain assertions regarding the merits of the matters before the System Board. Not only are these assertions wholly irrelevant, they are unsupported by the record. The assertions that Rall reported for and took the flight in an intoxicated condition are based upon statements in the **dissents** to the System Board's Awards. IA. 33, 35. The Board's **Awards** negate the basis for the statements, finding that Rall had nothing to drink for the 14 hours before flight, and only two or three drinks before that. IA. 23-24, see IA. 26-27.

being so, federal courts must determine what provisions govern such enforcement. The only available source for provisions governing enforcement of system, group or regional adjustment board awards is 45 U. S. C., § 153 Second, which provides that such awards are enforceable "in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the [National Railroad] Adjustment Board," which provisions in turn allow attorneys' fees.

The substantiality and importance of the question herein is shown by the legislative history of the air carrier amendments. Respondent's assertion that the legislative history referred to at Petition 16-17, nn. 12-13 regards only the as yet non-existent National Air Transport Adjustment Board ("NATAB"), is erroneous. At the outset of the hearing in question it was clearly noted that the special adjustment boards would exist until such time as the NATAB should be established, and that "The expense of maintaining a permanent adjustment board need not be undertaken until it has been shown that such expenditure is warranted." Hearings on S. 2496 before a Subcommittee of the Senate Committee on Interstate Commerce, 74th Cong., 1st Sess. 3-4 (1935). All of the points referred to in Petition 16-17, nn. 12-13, were made with reference to this state of affairs, and thus plainly referred to the machinery of system, group or regional boards which would exist for an indeterminate period under the Act. Further, several of the references **explicitly** refer to 45 U. S. C., §§ 183 (major disputes) and 184 (system, group or regional adjustment boards), as opposed to 45 U. S. C., § 185 (NATAB). *Id.* at 12 (§§ 183 and 184 "are drawn in such a way as to give exactly the same range to the men engaged in air transport as would be involved by men engaged in railroad employment" and to "make it apply with uniformity to both classes of employees")

15 (under §§ 183 and 184 "airway operators will be able to invoke the benefits the same as railway employees may now do"), 28 (the provisions of § 184 "bring the bill into line with the plan devised by the Railway Labor Act in respect of the handling of minor disputes growing out of grievances or the interpretation of existing working rules and labor agreements").

Respondent has shown itself unable to point to any possible **reason** for Congress wanting to exclude those enforcing air line system, group or regional adjustment board awards from recovery of attorneys' fees Respondent concedes are allowed to those enforcing NRAB, NATAB, and railroad system, group or regional adjustment board awards. The Petition states compelling reasons for finding Congress did **not** do this, and it is respectfully submitted that this Court should grant certiorari to resolve this substantial and important question of federal law.

II. CONFLICT IN THE COURTS.

A. Pre-**Central Airlines** decisions.

Respondent's contentions that in the pre-**Central Airlines** decisions cited by Petitioner "the courts failed to analyze the language of §§ 184 and 185 closely," that "this resulted in considerable confusion as to the applicability of § 153 to air carriers," and that "In none of those cases did the parties raise, nor did the court expressly rule upon, the specific question of whether § 153 was applicable to Airline System Boards established pursuant to § 184," cannot be countenanced.

That Courts have failed to closely analyze the language of controlling statutes is a serious accusation, and Re-

spondent is plainly not justified in leveling it here. Similarly, it is difficult to imagine how the courts could have been more explicit in ruling that provisions of § 153 apply to § 184 air line system board questions than they were in **Arnold v. United Air Lines, Inc.**, 296 F. 2d 191, 195 (7th Cir. 1961) (§ 153 eligibility of board members); **Crusen v. United Air Lines, Inc.**, 239 F. 2d 863 (10th Cir. 1956), **affirming per curiam on basis of opinion below** 141 F. Supp. 347 (D. Colo. 1956) (§ 153 jurisdiction of board—see in particular 141 F. Supp. at 349-50); **Bates v. Northwest Airlines, Inc.**, 171 F. Supp. 273, 274-75 (D. Minn. 1959) (§ 153 First (p) jurisdiction of district court; § 153 First (o) (p) requirement of entry of board order; § 153 First (m) procedure for board interpretation of award); **Farris v. Alaska Airlines, Inc.**, 113 F. Supp. 907, 909 and n. 5 (W. D. Wash. 1953) (§ 153 finality requirement); and **International Union, UAW v. Delta Airlines, Inc.**, 83 F. Supp. 63 (N. D. Ga. 1949) (§ 153 requisites of adjustment board).

As for the alleged "considerable confusion as to the applicability of § 153 to air carriers," the only Courts which were thus confused were those in **Metcalf v. National Airlines, Inc.**, 271 F. 2d 817 (5th Cir. 1959), and **Air Line Pilots Ass'n, Int'l v. Trans World Airlines, Inc.**, 203 F. Supp. 438 (W. D. Mo. 1962), each of which ruled that a federal district court lacks jurisdiction to enforce air line board awards, which ruling was held erroneous by this Court in **Central Airlines.**

B. Post-**Central Airlines** decisions.

Petitioners strongly dispute Respondent's claim that "close examination" of the three post-**Central Airlines** Court of Appeals decisions reveals that none of them contains any holding regarding the applicability of § 153

to air lines. The Court in **Transport Workers Union of America v. American Airlines, Inc.**, 413 F. 2d 746 (10th Cir. 1969), clearly and expressly held the § 153 finality provision to be applicable to air line system board awards, and the Courts in **Kelley v. Eastern Air Lines, Inc.**, 389 F. 2d 478 (5th Cir. 1967) and **Capitol Airways Inc. v. Air Line Pilots Ass'n, Int'l**, 341 F. 2d 288 (6th Cir.), **cert. denied**, 381 U. S. 952 (1965), so held by necessary implication.

Respondent apparently concedes (as it must) that the Courts in the post-**Central Airlines** district court decisions Petitioners have cited held provisions of § 153 applicable to air line system board questions. Petitioner asserts that Respondent, not those courts, is "simply wrong."

Regarding the Court of Appeals conflict respecting district court jurisdiction, Petitioners cannot conceive how the Court in **Transport Workers Union of America v. American Airlines, Inc.**, 413 F. 2d 746 (10th Cir. 1969), could have been any more explicit than when it said, "Under * * * 45 U. S. C. A., § 153 * * * orders of * * * [an air line] System Board of Adjustment * * * are explicitly * * * enforceable in district courts." 413 F. 2d at 748.

III. CENTRAL AIRLINES.

It is respectfully submitted that this Court in **International Ass'n of Machinists v. Central Airlines, Inc.**, 372 U. S. 682 (1963), did not "hold" that air carriers are not covered by 45 U. S. C., § 153, or "conclude" that federal court jurisdiction could not be predicated upon the provisions of 45 U. S. C., § 153 First (p). Respondent's contention to the contrary is based upon no more than this Court's recitation of the substance of 45 U. S. C.,

§ 181. Indeed, as shown at Petition 22-26, the Court of Appeals' decision conflicts with the principles set forth in **Central Airlines.**

CONCLUSION

For the foregoing reasons, and those set forth in the Petition, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted

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